1862.

SUPREME COURT OF THE UNITED STATES.

No. 188.

JOHN B. BUTLER, LEVI REYNOLDS, JR., AND WILLIAM OVERFIELD, LATE BOARD OF CANAL COMMISSONERS OF PENNSYLVANIA, PLAINTIFFS IN ERROR,

vs.

THE COMMONWEALTH OF PENNSYLVANIA.

IN ERROR TO THE SUPREME COURT OF PENNSYLVANIA.

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J. & G. S. Gideon, printers.

SUPREME COURT OF PENNSYLVANIA,
Middle district.

Among the records of said court to May T., 1848, No. 26, it is thus contained, to wit:

Docket entry.

LEVI REYNOLDS, William Overfield, and John B. Butler, late board of canal commissioners of the Commonwealth of Pennsylvania, plaintiffs in error,
vs.
THE COMMONWEALTH OF PENNSYLVANIA, defendants in error.

Writ of error to the court of common pleas of the county of Dauphin.

Exit January 3, 1848. Eo die, pre. aff. and judg. filed.
June 19, 1848, record filed. Eo die, plea, etc., issue.
June 27, 1848, argued at C. A. V.
And now, to wit, June 31, 1848, ordered, that the judgment of the court of common pleas aforesaid be affirmed by the court.
Certified as a true copy of the docket entry.
Test: P. C. SEDGWICK,
Proth'y.

Copy of the record brought up by writ of error.

Among the records of the court of common pleas of Dauphin county, of August term, 1844, No. 22, it is thus contained, to wit, May 22:

Docket entry.

H. ALRICKS, October 28, 1846. KRAUS & BOAS,

THE COMMONWEALTH OF PENNSYLVANIA
vs.
JOHN B. BUTLER, Levi Reynolds, jr., and William Overfield, the late board of canal commissioners of said commonwealth. } 22.

Appeal from the settlement of the auditor general and State treasurer.

May 21, 1844, Recognisance filed. November court, 1846, T. L. September 19, 1846, narr. filed. Same day, on motion of H. Alricks, esq., court grant a rule on the defendants to plead on four weeks' notice, or judgment by default. October 19, 1846, defendants plead payment with leave, &c. November adjourned court, 1846, (T. L.) March adjourned court, 1847, (J. Z.) March, 15, 1847, upon affidavit of William Overfield filed, court continue this cause at the costs of defendants. October adjourned court, 1847, (T. L.) October 25th, A. D. 1847, trial ordered; whereupon a jury of the country being called, came, to wit, William Espy, Christian Walter, Samuel Newbaker, Benjamin Ely, Frederick Fordney, Jacob Sanders, George Kinter, Thomas

Lingle, Henry Schreiner, Benjamin Nuger, Richard Updegrour, and Henry B. Crouse, twelve good and lawful men of the county of Dauphin, duly selected, summoned, returned, empannelled, ballotted, and sworn or affirmed, well and truly to try the issue joined, &c.; and who, upon their oaths and affirmations aforesaid, respectively do say, October 25, A. D. 1847, that they find for the plaintiff the sum of thirteen hundred and one dollars and twenty-six cents damages with six cents costs. Judgment nisi. Judgment on the verdict. November 13, 1847, charge of court filed. January 3, 1848, rec'd writ of error and filed.

DAUPHIN COUNTY, ss:

[SEAL.] Certified from the record, April 3, 1848.

WM. D. BOAS, *Proth'y.*

THE COMMONWEALTH OF PENNSYLVANIA
vs.
JOHN B. BUTLER, Levi Reynolds, jr., and William Overfield, late board of canal commissioners of Pennsylvania.

John B. Butler, Levi Reynolds, jr., and William Overfield, late board of canal commissioners of this commonwealth, defendants, appeal to the court of common pleas of Dauphin county, Pennsylvania, from the settlement of their account with said commonwealth, made by the auditor general and State treasurer thereof on the 23d day of March, A. D. 1844. Notice of which settlement was presented to them.

KRAUSE & BOAS,
Att'y for def'ts.

May 20, 1844.

To WILLIAM F. PARKER, esq.,
Auditor general of said Commonwealth.

Defendants' specifications of their objections to said settlement.

The said defendants object to the above mentioned settlement of their account with said commonwealth, because 1st. The auditor general and State treasurer disallowed, in said settlement, said defendants' just and lawful claim upon said commonwealth for the sum of one thousand and seventy-one dollars; for which sum they presented lawful and sufficient vouchers to said auditor general [and] State treasurer prior to said settlement of their said account, which vouchers were rejected illegally and improperly.

2d. Said defendants were appointed canal commissioners of said commonwealth for the term of one year, commencing on the first day of February, A. D. 1843, at a compensation of four dollars each per day; by which appointment said commonwealth contracted with them to employ them as canal commissioners during the whole continuance of said time, and to pay them each four dollars for every day during said continuance thereof—the obligation of which contract could not be impaired by said commonwealth; and, therefore, the act of assembly of the 18th April, 1843, entitled an act to reduce the expenses and provide for the election of the board of canal commissioners, being uncon-

stitutional and void, conferred no authority on said auditor general and State treasurer to withhold from said defendants one dollar each per day from said 18th of April, 1843, to the 8th of January, 1844.

3d. The defendants, being appointed as aforesaid for a term of years under the constitution and laws of the commonwealth, were entitled to hold the office of canal commissioners, and receive the compensation therefor appointed by law when they received their commissions, during the whole of said term; and, therefore, the said act of 18th April, 1843, being unconstitutional and void, the said auditor general and State treasurer had no right to disallow said compensation of each of said defendants from the 8th of January, 1844, to the 31st of the same month.

4th. The auditor general and State treasurer aforesaid did not allow in the settlement of the account above mentioned the sum of $357 to each of said defendants, but rejected the same, and in that committed error—the same being legally and justly due to each of them, or the sum of $1,071 00 being due to them all as a board of canal commissioners from the said commonwealth.

KRAUSE & BOAS,
Atty's for defendants.

May 20, 1844.

To WM. F. PARKER, esq.,
Aud. Gen'l of the Commonwealth of Penn.

AUDITOR GENERAL'S OFFICE,
Harrisburg, May 21, 1844.

I certify that the foregoing appeal was filed in the auditor general's office on the 20th of May instant.

Witness my hand and seal of office, the day and year aforesaid.

[SEAL.]

W. F. PARKER.
Per JNO. KRAUSE,
Auditor General.

The Commonwealth of Pennsylvania in account with the late Board of Canal Commissioners, John B. Butler, Levi Reynolds, jr., and William Overfield,

Dr. to balance due Commonwealth, January 31, 1844, as per settlement,			$4,587 50
February 1, 1844, refunded			7 50
			4,580 00
1843. Paid T. L. Wilson, secretary to Board, as per receipt,		$200 00	
" J. B. Butler, salary from 1 Feb., 1843, to April 18th, inclusive, at $4.00 per day, and from April 18 to January 8, inclusive, at $3 00 per day		1,103 00	
Paid Levi Reynolds, for salary from 1 Feb., 1843, to April 18, inclusive, at 4.00 per day, and from 18 April to January 8, 1844, inclusive, at 3.00 per day		1,103 00	
Paid William Overfield salary from 1 Feb., 1843, to April 18, inclusive, at 4.00 per day, and from April 18 to January 8th, 1844, inclusive, at $3.00 per day		1,103 00	$3,509 00
Due Commonwealth			1,071 00

Settled: WM. F. PARKER,
Auditor General's office, March 22, 1844.

Approved: JOB MANN,
Treasury office, March 22, 1844.

1166

Auditor General's office, Harrisburg, May 20, 1844.

I certify that the foregoing is a true copy of the original remaining on file in this department.

[SEAL.] Witness my hand and seal of office.

WM. F. PARKER,
Per J. KRAUSE,
Auditor General.

22, August term, 1844.

COMMONWEALTH
vs.
THE BOARD OF CANAL Commissioners
John Butler, Levi Reynolds, jr., and
Wm. Overfield.

Copy of account, filed May 22, 1844.

DAUPHIN COUNTY, ss:

In Dauphin county common pleas, No. 22, August T, 1844.

John B. Butler, Levi Reynolds, jr., and William Overfield, (the late board of canal commissioners of the Commonwealth of Pennsylvania,) late of the county aforesaid, were summoned to answer the Commonwealth of Pennsylvania of a plea of trespass on the case on promises; and thereupon the said Commonwealth of Pennsylvania, by Hamilton Alricks, her attorney, complains, for that the said John B. Butler, Levi Reynolds, and William Overfield, heretofore, to wit, on the twenty-second day of March, in the year of our Lord one thousand eight hundred and forty-four, at the county aforesaid, were indebted to the said Commonwealth of Pennsylvania in the sum of one thousand and seventy-one dollars, for so much money, by the said Commonwealth of Pennsylvania before that time lent and advanced to the said John B. Butler, Levi Reynolds, and William Overfield, at their special instance and request; and whereas the said John B. Butler, Levi Reynolds, and William Overfield, on the day and year last aforesaid, at the county aforesaid, were indebted to the said Commonwealth of Pennsylvania in the further sum of one thousand and seventy-one dollars, for so much money by the said Commonwealth of Pennsylvania before that time paid, laid out, and expended, to and for the use of the said John B. Butler, Levi Reynolds, and William Overfield, at their like special instance and request; and whereas the said John B. Butler, Levi Reynolds, and William Overfield, on the day and year last aforesaid, at the county aforesaid, were indebted to the said the Commonwealth of Pennsylvania, in the further sum of one thousand and seventy-one dollars, for so much money, by the said John B. Butler, Levi Reynolds, William Overfield, before that time had and received to and for the use of the said Commonwealth of Pennsylvania; and whereas, also, the said John B. Butler, Levi Reynolds, and William Overfield, afterwards, to wit, on the day and year last aforesaid, at the county aforesaid, accounted, with the said Commonwealth of Pennsylvania, of and concerning divers other sums of money from the said John B. Butler, Levi Reynolds, and William Overfield, to the said Commonwealth of Pennsylvania, before that time due and owing, and

stitutional and void, conferred no authority on said auditor general and State treasurer to withhold from said defendants one dollar each per day from said 18th of April, 1843, to the 8th of January, 1844.

3d. The defendants, being appointed as aforesaid for a term of years under the constitution and laws of the commonwealth, were entitled to hold the office of canal commissioners, and receive the compensation therefor appointed by law when they received their commissions, during the whole of said term; and, therefore, the said act of 18th April, 1843, being unconstitutional and void, the said auditor general and State treasurer had no right to disallow said compensation of each of said defendants from the 8th of January, 1844, to the 31st of the same month.

4th. The auditor general and State treasurer aforesaid did not allow in the settlement of the account above mentioned the sum of $357 to each of said defendants, but rejected the same, and in that committed error—the same being legally and justly due to each of them, or the sum of $1,071 00 being due to them all as a board of canal commissioners from the said commonwealth.

KRAUSE & BOAS,
Atty's for defendants.

May 20, 1844.

To WM. F. PARKER, esq.,
Aud. Gen'l of the Commonwealth of Penn.

AUDITOR GENERAL'S OFFICE,
Harrisburg, May 21, 1844.

I certify that the foregoing appeal was filed in the auditor general's office on the 20th of May instant.

Witness my hand and seal of office, the day and year aforesaid.

[SEAL.]

W. F. PARKER.
Per JNO. KRAUSE,
Auditor General.

The Commonwealth of Pennsylvania in account with the late Board of Canal Commissioners, John B. Butler, Levi Reynolds, jr., and William Overfield,

Dr. to balance due Commonwealth, January 31, 1844, as per settlement,			$4,597 50
February 1, 1844, refunded			7 50
			4,590 00
1842. Paid T. L. Wilson, secretary to Board, as per receipt,		$200 00	
" J. B. Butler, salary from 1 Feb., 1843, to April 18th, inclusive, at $4.00 per day, and from April 18 to January 8, inclusive, at $3 00 per day		1,103 00	
Paid Levi Reynolds, for salary from 1 Feb., 1843, to April 18, inclusive, at 4.00 per day, and from 18 April to January 8, 1844, inclusive, at 3.00 per day		1,103 00	
Paid William Overfield salary from 1 Feb., 1843, to April 18, inclusive, at 4.00 per day, and from April 18 to January 8th, 1844, inclusive, at $3.00 per day		1,103 00	$3,509 00
Due Commonwealth			1,071 00

Settled: WM. F. PARKER,
Auditor General's office, March 22, 1844.

Approved: JOB MANN,
Treasury office, March 22, 1844.

Auditor General office, *Harrisburg, May 20, 1844.*

I certify that the foregoing is a true copy of the original remaining on file in this department.

[SEAL.] Witness my hand and seal of office. WM. F. PARKER,
Per J. KRAUSE,
Auditor General.

22, August term, 1844.

COMMONWEALTH
vs.
THE BOARD OF CANAL Commissioners, John Butler, Levi Reynolds, jr., and Wm. Overfield.

Copy of account, filed May 22, 1844.

DAUPHIN COUNTY, *ss:*

In Dauphin county common pleas, No. 22, August T, 1844.

John B. Butler, Levi Reynolds, jr., and William Overfield, (the late board of canal commissioners of the Commonwealth of Pennsylvania,) late of the county aforesaid, were summoned to answer the Commonwealth of Pennsylvania of a plea of trespass on the case on promises; and thereupon the said Commonwealth of Pennsylvania, by Hamilton Alricks, her attorney, complains, for that the said John B. Butler, Levi Reynolds, and William Overfield, heretofore, to wit, on the twenty-second day of March, in the year of our Lord one thousand eight hundred and forty-four, at the county aforesaid, were indebted to the said Commonwealth of Pennsylvania in the sum of one thousand and seventy-one dollars, for so much money, by the said Commonwealth of Pennsylvania before that time lent and advanced to the said John B. Butler, Levi Reynolds, and William Overfield, at their special instance and request; and whereas the said John B. Butler, Levi Reynolds, and William Overfield, on the day and year last aforesaid, at the county aforesaid, were indebted to the said Commonwealth of Pennsylvania in the further sum of one thousand and seventy-one dollars, for so much money by the said Commonwealth of Pennsylvania before that time paid, laid out, and expended, to and for the use of the said John B. Butler, Levi Reynolds, and William Overfield, at their like special instance and request; and whereas the said John B. Butler, Levi Reynolds, and William Overfield, on the day and year last aforesaid, at the county aforesaid, were indebted to the said the Commonwealth of Pennsylvania, in the further sum of one thousand and seventy-one dollars, for so much money, by the said John B. Butler, Levi Reynolds, William Overfield, before that time had and received to and for the use of the said Commonwealth of Pennsylvania; and whereas, also, the said John B. Butler, Levi Reynolds, and William Overfield, afterwards, to wit, on the day and year last aforesaid, at the county aforesaid, accounted, with the said Commonwealth of Pennsylvania, of and concerning divers other sums of money from the said John B. Butler, Levi Reynolds, and William Overfield, to the said Commonwealth of Pennsylvania, before that time due and owing, and

then in arrear and unpaid; and upon such accounting the said John B. Butler, Levi Reynolds, and William Overfield, were then and there found to be in arrear and indebted to the said Commonwealth of Pennsylvania in the further sum of one thousand and seventy-one dollars; and, being so found in arrear and indebted, they, the said John B. Butler, Levi Reynolds, and William Overfield, in consideration thereof, afterwards, to wit, on the day and year last aforesaid, at the county aforesaid, undertook, and then and there faithfully promised the said Commonwealth of Pennsylvania, to pay her the said several sums of money, when they, the said John B. Butler, Levi Reynolds, and William Overfield, should be thereunto afterwards requested; nevertheless the said John B. Butler, Levi Reynolds, William Overfield, not regarding their said several promises and undertaking, but contriving to deceive the said Commonwealth of Pennsylvania in this behalf, have not as yet paid the said several sums of money, or any or either of them, or any part thereof to the said the Commonwealth of Pennsylvania, although often requested so to do. But the said John B. Butler, Levi Reynolds, and William Overfield, to pay the said Commonwealth of Pennsylvania the same, hath hitherto wholly neglected and refused, and still doth neglect and refuse, to the damage of the said Commonwealth of Pennsylvania two thousand dollars; and therefore she brings her suit.

JOHN DOE,
RICHARD ROE,
Pledges of prosecution.

22. August term, 1844.

COMMONWEALTH OF PENNSYLVANIA
vs.
JOHN B BUTLER, Levi Reynolds, jr., and William Overfield, late board of canal commissioners of Pennsylvania.

Narrative.

Filed Sept. 19, 1846.

COMMONWEALTH OF PENNSYLVANIA,
vs.
JOHN B. BUTLER, Levi Reynolds, jr., and William Overfield, the late board of canal commissioners of said commonwealth.

In the court of common pleas of Dauphin county, of August term, 1844. No. 22.

Appeal by the defendants from the settlement of their accounts by the auditor general and State treasurer.

We, John B. Butler, Levi Reynolds, jr., and William Overfield, and A. Boyd Cummings and George Prince, sureties, acknowledge ourselves to be held and firmly bound to the Commonwealth of Pennsylvania in the sum of two thousand one hundred and forty-two dollars, money

of the United States, upon this condition, that John B. *Reynolds*, Levi Reynolds, jr., and William Overfield, the above named defendants, do prosecute with effect the appeal which they have made and entered in the above stated case, and pay all costs and charges which the court or arbitrators shall award; and also pay any sum of money which shall appear by the judgment of the said court or award of arbitrators to be due by them to the commonwealth; or, in default thereof, that the said A. Boyd Cummings and George Prince, sureties, will pay the same for them.

JOHN B. BUTLER,
LEVI REYNOLDS, Jr.,
WM. OVERFIELD,
A. B. CUMMINGS,
GEO. PRINCE.

May 28, 1844. I approve of the sureties herein named.

WM. DACH, *Judge.*

Also, subscribed, taken, and acknowledged before me, one of the judges of the court of common pleas of Dauphin county, the 28th day of May, 1844.

WM. DACH, *Judge.*

22. August term, 1844.

THE COMMONWEALTH OF PENNSYLVANIA
vs.
JOHN B. BUTLER, Levi Reynolds, jr., and William Overfield, the late board of canal commissioners of said commonwealth.

Recognisance.

Filed, May 28, 1844.

COMMONWEALTH
vs.
JOHN B. BUTLER, LEVI REYNOLDS, WILLIAM OVERFIELD, late canal commissioners. } No. 20.

August T., 1844.

Appeal from the settlement of their account by Wm. F. Parker, auditor general, and Job Mann, State treasurer, 23d March, 1844.

The defendants were appoined canal commissioners for the term of one year, commencing on the first day of February, 1843, at which time their compensation was fixed by law at four dollars per day. On the 18th of April, 1843, the legislature, by an act entitled "an act to reduce the expenses and provide for the election of canal commissioners," (Pamphlet Laws of 1843, page 337,) reduced the pay of canal commissioners from four to three dollars per day. The auditor general and State treasurer settled the accounts of the canal commissioners in pursuance of this act. The canal commissioners contend that this act is unconstitutional, so far as it relates to reducing their pay after their appointment to office; and this is the only question that is presented in this case. The court instruct the jury, that the act in question is not

unconstitutional; and, as there is no other dispute, they should find for the commonwealth. To this charge the defendants' counsel excepts; and it is filed at their request. N. B. ELDRED, *Pres. judge.*

No. 22. August term, 1844.

COMMONWEALTH. }
vs.
CANAL COMMISSIONERS. }

Charge. Filed Nov. 13, 1847.

PENNSYLVANIA, *ss:*

[SEAL.] The Commonwealth of Pennsylvania, to the judges of the court of common pleas of the county of Dauphin, greeting:

Because in the record and process, and in rendering the judgment, in a certain plaint which was in our said court, before the judges of the same court, by our writ, between the Commonwealth of Pennsylvania, plaintiff, Levi Reynolds, William Overfield, and John B. Butler, late canal commissioners, defendants, as it is said manifest error hath intervened, to the great damage of the said defendants, as by the complaint of the same we have received information; we, willing that, if any error be therein, it should be corrected, and that speedy justice be done to the parties in this part, do command you, that if judgment, as it is said, be rendered in the said plea, then the record and process, and all things touching the same, under your seal, distinctly and openly, you have before the judges of our supreme court at a supreme court to be held at Harrisburg, in and for the middle district of said commonwealth, on the 19th day of June next, A. D. 1848, and this writ; that the record and process aforesaid being inspected, we may further cause to be done what of right and according to our laws and customs ought.

Witness the Hon. John B. Gibson, esq., D. L. D., chief justice of our said supreme court, at Harrisburg, the 2d day of July, 1847, and of the commonwealth the seventy-first. P. C. SEDGWICK,
Prothy. Mid. Dist.

Allowed by THOS. S. BELL.

No. 22. May term, 1848.

JOHN B. BUTLER, Levi Reynolds, jr., and William Overfield, plaintiffs in error, }
vs.
THE COMMONWEALTH. }

Writ of error to the court of common pleas of Dauphin.

Exit January 3, 1848.

Precipe, affidavit, and recognisance filed.

$6 paid by W. C. Boas.

Rule on defendant in error to appear and plead at the return of the within writ.

Filed January 3, 1848. F. K. BOAS.

To the honorable the judges within named.

The record and proceedings within mentioned, with all things touching the same, we certify and send, together with this writ, as within we are commanded.

So answers N. B. ELDRED. [SEAL.]

Assignment of errors.

The defendants below sued out this writ of error, and assign for errors: First. That the court erred in charging that the commonwealth was entitled to recover, because—

1. The plaintiffs in error being commissioned to hold the offices of canal commissioners for one year from 1st February, 1843, when their compensation was fixed by law at four dollars per day, they could not be legislated out of office before 31st January, 1844, when their commissions would expire; and therefore they continued legally in the exercise of the duties of said office till the last mentioned day, and were entitled to be paid at the rate of four dollars per day up to that time.

2. That, if they could be legislated out of office before the 31st January, 1844, their compensation, as fixed by law when they entered upon the duties of the office, could not be changed without their consent during their continuance in office.

3. That the act of 18th April, 1843, referred to in the charge, so far as regarded the pay and tenure of office of the plaintiffs in error, who were in office at the time of its passage, was unconstitutional.

4. That there could be no recovery against the plaintiffs in error jointly, each being liable separately, if liable at all.

Second. That the auditor general and State treasurer had no authority by law to settle the account in question; and therefore the whole matter was coram non judice.

JOHN B. BUTLER et al.
vs.
THE COMMONWEALTH.

Assignment of errors. Filed June 19, 1848.

Supreme court of Pennsylvania, middle district, of May term, 1848.

JOHN B. BUTLER, Levi Reynolds, jr., and William Overfield, plaintiffs in error,
vs.
THE COMMONWEALTH OF PENNSYLVANIA, defendants in error. } No. 26.

Writ of error to the court of common pleas of Dauphin county.

And now, to wit, June 30, A. D. 1848, at a supreme court held at Harrisburg, in and for the middle district of the Commonwealth of Pennsylvania, the judgment of the court of common pleas of Dauphin county aforesaid affirmed.

PENNSYLVANIA, ss:

[SEAL.] Attest: P. G. SEDGWICK, *Prothy.*

unconstitutional; and, as there is no other dispute, they should find for the commonwealth. To this charge the defendants' counsel excepts; and it is filed at their request. N. B. ELDRED, *Pres. judge.*

No. 22. August term, 1844.

COMMONWEALTH. }
vs. }
CANAL COMMISSIONERS. }

Charge. Filed Nov. 13, 1847.

PENNSYLVANIA, *ss:*

[SEAL.] The Commonwealth of Pennsylvania, to the judges of the court of common pleas of the county of Dauphin, greeting:

Because in the record and process, and in rendering the judgment, in a certain plaint which was in our said court, before the judges of the same court, by our writ, between the Commonwealth of Pennsylvania, plaintiff, Levi Reynolds, William Overfield, and John B. Butler, late canal commissioners, defendants, as it is said manifest error hath intervened, to the great damage of the said defendants, as by the complaint of the same we have received information; we, willing that, if any error be therein, it should be corrected, and that speedy justice be done to the parties in this part, do command you, that if judgment, as it is said, be rendered in the said plea, then the record and process, and all things touching the same, under your seal, distinctly and openly, you have before the judges of our supreme court at a supreme court to be held at Harrisburg, in and for the middle district of said commonwealth, on the 19th day of June next, A. D. 1848, and this writ; that the record and process aforesaid being inspected, we may further cause to be done what of right and according to our laws and customs ought.

Witness the Hon. John B. Gibson, esq., D. L. D., chief justice of our said supreme court, at Harrisburg, the 2d day of July, 1847, and of the commonwealth the seventy-first. P. C. SEDGWICK,
Prothy. Mid. Dist.

Allowed by THOS. S. BELL.

No. 22. May term, 1848.

JOHN B. BUTLER, Levi Reynolds, jr., and William Overfield, plaintiffs in error, }
vs. }
THE COMMONWEALTH. }

Writ of error to the court of common pleas of Dauphin.

Exit January 3, 1848.

Precipe, affidavit, and recognisance filed.

$6 paid by W. C. Boas.

Rule on defendant in error to appear and plead at the return of the within writ.

Filed January 3, 1848. F. K. BOAS.

To the honorable the judges within named.

The record and proceedings within mentioned, with all things touching the same, we certify and send, together with this writ, as within we are commanded.

So answers N. B. ELDRED. [SEAL.]

Assignment of errors.

The defendants below sued out this writ of error, and assign for errors: First. That the court erred in charging that the commonwealth was entitled to recover, because—

1. The plaintiffs in error being commissioned to hold the office of canal commissioners for one year from 1st February, 1843, when their compensation was fixed by law at four dollars per day, they could not be legislated out of office before 31st January, 1844, when their commissions would expire; and therefore they continued legally in the exercise of the duties of said office till the last mentioned day, and were entitled to be paid at the rate of four dollars per day up to that time.

2. That, if they could be legislated out of office before the 31st January, 1844, their compensation, as fixed by law when they entered upon the duties of the office, could not be changed without their consent during their continuance in office.

3. That the act of 18th April, 1843, referred to in the charge, so far as regarded the pay and tenure of office of the plaintiffs in error, who were in office at the time of its passage, was unconstitutional.

4. That there could be no recovery against the plaintiffs in error jointly, each being liable separately, if liable at all.

Second. That the auditor general and State treasurer had no authority by law to settle the account in question; and therefore the whole matter was coram non judice.

JOHN B. BUTLER et al.
vs.
THE COMMONWEALTH.

Assignment of errors. Filed June 19, 1848.

Supreme court of Pennsylvania, middle district, of May term, 1848.

JOHN B. BUTLER, Levi Reynolds, jr., and William Overfield, plaintiffs in error,
vs.
THE COMMONWEALTH OF PENNSYLVANIA, defendants in error. } No. 26.

Writ of error to the court of common pleas of Dauphin county.

And now, to wit, June 30, A. D. 1848, at a supreme court held at Harrisburg, in and for the middle district of the Commonwealth of Pennsylvania, the judgment of the court of common pleas of Dauphin county aforesaid affirmed.

PENNSYLVANIA, ss:

[SEAL.] Attest: P. C. SEDGWICK, *Prothy.*

Opinion supreme court.

Per curiam. The principle of this case has been so often decided that it is unnecessary to do more than to point to the authorities cited on the part of the defendant in error.

The judgment, therefore, is affirmed.

"Not to be reported."

Know all men by these presents, that we are held and firmly bound unto the Commonwealth of Pennsylvania in the full and just sum of five hundred dollars, to be paid to the said Commonwealth of Pennsylvania, her certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals, and dated this day of , in the year of our Lord one thousand eight hundred and forty-eight.

Whereas, lately, at a supreme court of Pennsylvania, in a suit depending in said court between John B. Butler, Levi Reynolds, jr., and William Overfield, late board of canal commissioners of Pennsylvania, plaintiffs in error, and the Commonwealth of Pennsylvania, defendant in error, judgment was rendered against the said plaintiffs in error; and the said plaintiffs in error having obtained a writ of error, and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said Commonwealth of Pennsylvania, citing and admonishing to be and appear at a Supreme Court, to be holden at Washington the first Monday of December next.

Now, the condition of the above obligation is such, that if the said John B. Butler, Levi Reynolds, jr., and William Overfield, late board of canal commissioners of Pennsylvania, shall prosecute said writ of error to effect, and answer all damages and costs if they fail to make their plea good, then the above obligation to be void, else to remain in full force and virtue.

JOHN B. BUTLER, [SEAL.]
A. G. WALKER, [SEAL.]
JAMES GRAY, 4 st. [SEAL.]

Sealed and delivered in presence of—
J. BARTON,
W. J. STUART,
A. MORRIS, as to JAMES GRAY.

Approved by JOHN B. GIBSON.

BUTLER et al., vs. THE COMMONWEALTH. } No. 26, M. T., 1848.

Bond to prosecute writ of error.

Filed Oct. 10, 1848.

1469.

We acknowledge to owe and be indebted to the Commonwealth of Pennsylvania in the sum of two thousand six hundred [and] two dollars and fifty cents, lawful money of the United States, to be made and levied on our goods and chattels, lands and tenements, jointly and severally, to be made and levied to the use of the said Commonwealth of Pennsylvania, if default be made in the following condition:

Whereas the said Levi Reynolds, William Overfield, and John B. Butler have prosecuted a writ of error from the middle district of the supreme court to the court of common pleas of Dauphin county, directed on a judgment obtained against the said Levi Reynolds, William Overfield, and John B. Butler, at the suit of the said Commonwealth of Pennsylvania.

Now, the condition of this recognisance is such, that if the said Levi Reynolds, William Overfield, and John B. Butler shall prosecute the said writ of error with effect, and, in case the said judgment shall be affirmed, shall pay the debt, interest, *and costs*, damages and costs in the former judgment affirmed, and also the debt, damages, and costs to be awarded for delay of execution, then this recognisance to be void; otherwise of force.

DAVID R. PORTER,
WM. JENNINGS.

Taken and acknowledged the 1st day of January, 1848, before me.
NATHANIEL B. ELDRED,
Pres. Judge.

CANAL COMMISSIONERS vs. THE COMMONWEALTH. } Dauphin. 26, M. T., 1848.

Recog. for writ of error.

Filed January 3, 1848.

In supreme court.

COMMONWEALTH OF PENNSYLVANIA,
Middle district, ss:

COMMONWEALTH OF PENNSYLVANIA vs. LEVI REYNOLDS, William Overfield, and John B. Butler, the late board of canal commissioners of said commonwealth.

In Dauphin common pleas of August term, 1844, No. 22.—Oct. 25, 1847, verdict in favor of plaintiff for $1,301 26.

Issue writ of error to the court of common pleas of Dauphin county to remove the record and all proceedings in this case.

F. K. BOAS,
Att'y for def'ts.

To P. C. SEDGWICK, esq., *Proth'y.*
January 3, 1848.

ALLEGHANY COUNTY,
City of Pittsburg, ss:

Before me, Thomas Steele, one of the aldermen in and for the city of Pittsburg, personally appeared John B. Butler, one of the above named defendants, and on his solemn oath says that the above writ of error is not sued out for the purpose of delay.

JOHN B. BUTLER.

Sworn and subscribed before me, this 25th day of November, 1847.

THOS. STEELE, *Alderman.*

CANAL COMMISSIONERS vs. THE COMMONWEALTH. } Dauphin. 26, M. T., 1848.

Filed January 3, 1848. $6 paid.

BOAS.

Supreme court of Pennsylvania, middle district.

I, Philo C. Sedgwick, prothonotary of the supreme court of Pennsylvania, in and for the middle district, do certify, that the foregoing is a full and complete transcript and copy of the record and proceedings of the supreme court aforesaid, in the case of John B. Butler, Levi Reynolds, jr., and William Overfield, plaintiffs in error, vs. the Commonwealth of Pennsylvania, defendant in error, No. 26, M. T. term, 1848; as the same remains docketed and on file.

In testimony whereof I have hereunto set my hand and affixed the [SEAL.] seal of said court, at Harrisburg, this 13th day of October, A. D. 1848.

P. C. SEDGWICK, *Proth'y.*

Writ of Error.

UNITED STATES OF AMERICA, *ss:*

[L. S.] The President of the United States, to the honorable the judges of the supreme court of Pennsylvania, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court of Pennsylvania, before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit, between John B. Butler, Levi Reynolds, jr., and William Overfield, late board of canal commissioners of Pennsylvania, plaintiffs in error, and the Commonwealth of Pennsylvania, defendant in error, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statue of, or an authority exercised under, said State, on the ground of their being repugnant to the constitution, treaties, or laws of the United States, and

the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the constitution, or of a treaty, or statute of, or commission held under, the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said John B. Butler, Levi Reynolds, jr., and William Overfield, late board of canal commissioners of Pennsylvania, as by their complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the first Monday of December next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the laws and custom of the United States should be done.

Witness the honorable Roger B. Taney, chief justice of the said Supreme Court, this first Monday of December, in the year of our Lord one thousand eight hundred and forty-seven.

WM. THOS. CARROLL,
Clerk of the Supreme Court of the United States.

Allowed by JOHN B. GIBSON.

Citation and service.

The United States of America, to the Commonwealth of Pennsylvania, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday of December next, pursuant to a writ of error, filed in the clerk's office of the supreme court of Pennsylvania, wherein John B. Butler, Levi Reynolds, jr., and William Overfield, late board of canal commissioners of Pennsylvania, are plaintiffs in error, and you are defendant in error, to show cause, if any there be, why judgment rendered against the said plaintiffs in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable John Bannister Gibson, chief justice of the supreme court of Pennsylvania, this sixteenth day of September, in the year of our Lord one thousand eight hundred and forty-eight.

JOHN B. GIBSON.

DAUPHIN COUNTY, *ss:*

On this fourteenth day of October, in the year of our Lord one thousand eight hundred and forty-eight, personally appeared Frederick

K. Boas, before me, the subscriber, a justice of the peace in and for said county, and makes oath that he delivered a true copy of the within citation to his excellency William F. Johnson, governor of Pennsylvania, and Townshend Haines, secretary of State, on the twenty-sixth day of September, A. D. 1848, and to James Cooper, esq., attorney general of Pennsylvania, on the thirtieth day of September, A. D. 1848.

F. K. BOAS.

Sworn and subscribed before me this 14th day of October, A. D. 1848.

DAVID HARRIS, *J. P.*

Copy of bond to prosecute writ of error.

Know all men by these presents, that we are held and firmly bound unto the Commonwealth of Pennsylvania in the full and just sum of five hundred dollars, to be paid to the said Commonwealth of Pennsylvania, certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals, and dated this day of , in the year of our Lord one thousand eight hundred and forty-eight.

Whereas, lately, at a supreme court of Pennsylvania, in a suit depending in said court, between John B. Butler, Levi Reynolds, jr., and William Overfield, late board of canal commissioners of Pennsylvania, plaintiffs in error, and the Commonwealth of Pennsylvania, defendant in error, judgment was rendered against the said plaintiffs in error; and the said plaintiffs in error having obtained a writ of error and filed a copy thereof in the clerk's office of the said court, to reverse the judgment in the aforesaid suit, and a citation directed to the said Commonwealth of Pennsylvania, citing and admonishing to be and appear at a Supreme Court of the United States, to be holden at Washington the first Monday of December next.

Now, the condition of the above obligation is such, that if the said John B. Butler, Levi Reynolds, jr., and William Overfield, late board of canal commissioners of Pennsylvania, shall prosecute said writ of error to effect, and answer all damages and costs if they fail to make their plea good, then the above obligation to be void, else to remain in full force and virtue.

JOHN B. BUTLER. [L. S.]
A. G. WALKER. [L. S.]
JAMES GRAY, *4th street.* [L. S.]

Sealed and delivered in presence of
J. BARTON.
M. J. STEWART.
A. MORRIS, as to James Gray.

Approved by JOHN B. GIBSON.

In the Supreme Court of the United States.

JOHN B. BUTLER, Levi Reynolds, jr., and William Overfield, late board of canal commissioners of Pennsylvania, plaintiffs in error,
vs.
THE COMMONWEALTH OF PENNSYLVANIA, defendant in error.

Sur writ of error to the supreme court of Pennsylvania.

Assignment of errors.

That the supreme court of Pennsylvania erred in affirming the judgment of the court of common pleas of Dauphin county, in that State, at the suit of the defendant in error, against the plaintiffs in error, as the act of assembly of the Commonwealth of Pennsylvania, passed upon the 18th day of April, 1843, entitled "An act to reduce the expenses and provide for the election of a board of canal commissioners," was unconstitutional and void, because:

1. The plaintiffs in error were severally commissioned, according to the constitution and laws of Pennsylvania, to hold the office of canal commissioner from one year from 1st February, 1843, when their compensation was fixed at four dollars per day, and they could not be legislated out of office, if at all, before the 31st January, 1844, when their commissions and the tenures of their offices would expire; and therefore they continued legally in office until the last mentioned day, and were entitled to be paid at the rate of four dollars per day up to that time.

2. That if they could be legislated out of office before 31st January, 1844, their compensation as fixed by law, when they entered upon the duties of the office, could not be changed without their consent during their continuance in office.

3. That the said act of assembly referred to in the charge of the president of the court of common pleas, and which the supreme court of Pennsylvania held to be constitutional and binding on the plaintiffs in error, was a violation of the Constitution of the United States, and transcended the powers of legislation possessed by the legislature of Pennsylvania, in so far at least as regarded the pay and tenure of office of the plaintiffs in error, who were in office for a fixed term and at a fixed compensation at the time of its passage.

J. M. PORTER.
For plaintiffs in error.

November 27, 1848.

Filed 4 December, 1848.